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Gary Aten: Bills would help clear obstacles for citizen-soldiers

Gary Aten is executive director of the Michigan Committee for Employer Support of the Guard and Reserve.

I'm writing in response to the LSJ's Feb. 23 editorial concerning House Bill 4152 and Senate Bill 192.

I currently serve as executive director for the Michigan Committee for Employer Support of the Guard and Reserve. ESGR is a Department of Defense-chartered organization with the mission of gaining and maintaining support from employers for those who serve in the Guard and Reserve. We do this by providing free educational, consulting, and mediation services to employers and those who serve in the Guard and Reserve.

The LSJ is correct in stating that USERRA (Uniformed Services Employment and Reemployment Rights Act) provides substantial protections for those serving on active or inactive duty in the uniformed services. However, it provides no protection for National Guard members serving on state active duty. Michigan Public Act 133 of 1955 provides such protection.

The new bills (HB 4152 and SB 192) will amend some provisions of Public Act 133 of 1955 so Michigan law more closely parallels USERRA. The law currently requires that the service member apply for reemployment within 15 days, regardless of the length of military service. USERRA provides reemployment rights based on applications for re-employment within time frames tied to the length of military service.

The amendments correct this inconsistency.

Michigan Public Act 133 of 1955 also provides additional protections not found in USERRA. Under Michigan law, employers are prohibited from dissuading someone from enlisting or accepting a commission in the National Guard. No such protections exist under USERRA. Employers are also prohibited from discharging a person from employment because of performance of duty in the National Guard or hinder or prevent him/her from performing any military service. These protections go beyond the protections provided by USERRA.

Finally, a violation of USERRA is a civil matter. If it reaches the federal court system, a judge may order compliance and award lost wages and compensatory damages. A violation of Michigan PA 133 of 1955 is a misdemeanor and is adjudicated as a criminal matter. This gives Michigan law additional weight when resolving conflicts where the employer has violated a service member's employment or reemployment rights. The proposed amendments will also give judges the power to order reinstatement and award attorney fees.

Previously, a violator of Michigan law, but not USERRA, could be found guilty of a misdemeanor, but the service member could still be out of his/her job.

As someone who handles cases on a daily basis when conflicts arise between employers and their Guard/Reserve employees due to the performance of military service, I can assure you both USERRA and Michigan PA 133 of 1955 (which is strengthened by House Bill 4152 and Senate Bill 192) are critical tools in protecting the employment and reemployment rights of the men and women serving in the uniformed services.

The efforts of Michigan legislators who are working to further protect the rights of those serving in harm's way, both at home and abroad, are right on target.

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